



Reprinted
February 26, 2002

ENGROSSED SENATE BILL No. 360

DIGEST OF SB 360 (Updated February 25, 2002 4:56 PM - DI 106)

Citations Affected: IC 22-9; IC 22-11; IC 34-51.

Synopsis: Civil actions concerning LP gas containers. Permits the civil rights commission to award attorney's fees to a prevailing complainant in a discrimination action brought before the commission. Permits an individual to bring a civil action against a person who misuses a liquified petroleum (LP) gas container. Permits the prevailing party to recover damages, court costs and attorney's fees. Repeals provision mandating that 75% of a punitive damages award go to the state.

Effective: July 1, 2002.

Harrison, Lanane

(HOUSE SPONSORS — GOODIN, CHERRY, KUZMAN)

January 8, 2002, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

January 31, 2002, amended, reported favorably — Do Pass.

February 4, 2002, read second time, ordered engrossed. Engrossed.

February 5, 2002, read third time, passed. Yeas 47, nays 1.

HOUSE ACTION

February 11, 2002, read first time and referred to Committee on Judiciary.

February 21, 2002, amended, reported — Do Pass.

February 25, 2002, read second time, amended, ordered engrossed.

C
o
p
y

ES 360—LS 6924/DI 106+



Reprinted
February 26, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED SENATE BILL No. 360

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-9-1-6 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2002]: Sec. 6. (a) The commission shall
3 establish and maintain a permanent office in the city of Indianapolis.
4 (b) The commission may appoint such attorneys and other
5 employees and agents as it considers necessary, fix their compensation
6 within the limitation provided by law, and prescribe their duties. All
7 these employees, with the exception of the executive director and
8 attorneys, shall be appointed by the commission from eligible lists to
9 be promulgated by the department of personnel as the result of a
10 competitive examination held under IC 4-15-2 and rules of the
11 department and on the basis of training, practical experience,
12 education, and character. However, special consideration and due
13 weight shall be given to the practical experience and training that a
14 person may have for the particular position involved regardless of his
15 academic training. Promotions, suspensions, and removal of persons
16 appointed from such lists shall be in accordance with IC 4-15-2. The
17 reasonable and necessary traveling expenses of each employee of the

ES 360—LS 6924/DI 106+



C
o
p
y

commission while actually engaged in the performance of duties in behalf of the commission shall be paid in accordance with the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Except as it concerns judicial review, the commission may adopt rules under IC 4-22-2 to implement this chapter.

(d) The commission shall formulate policies to effectuate the purposes of this chapter and make recommendations to agencies and officers of the state or local subdivisions thereof to effectuate such policies. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state or any political subdivision or agency thereof shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any matter before the commission.

(e) The commission shall receive and investigate complaints alleging discriminatory practices. The commission shall not hold hearings in the absence of a complaint. All investigations of complaints shall be conducted by staff members of the civil rights commission or their agents.

(f) The commission may create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this chapter. The commission may itself, or it may empower these agencies and councils to:

(1) study the problems of discrimination in the areas covered by section 2 of this chapter when based on race, religion, color, sex, handicap, national origin, or ancestry; and

(2) foster through community effort, or otherwise, good will among the groups and elements of the population of the state.

These agencies and councils may make recommendation to the commission for the development of policies and procedures in general. Advisory agencies and conciliation councils created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for reasonable and necessary actual expenses.

(g) The commission may issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, handicap, national origin, or ancestry.

(h) The commission shall prevent any person from discharging, expelling, or otherwise discriminating against any other person because he filed a complaint, testified in any hearing before this commission, or in any way assisted the commission in any matter under its investigation.



C
O
P
Y

(i) The commission may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the production for examination of any books and papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena issued under this section shall constitute a contempt. All hearings shall be held within Indiana at a location determined by the commission. A citation of contempt may be issued upon application by the commission to the circuit or superior court in the county in which the hearing is held or in which the witness resides or transacts business.

(j) The commission may appoint administrative law judges other than commissioners, when an appointment is deemed necessary by a majority of the commission. The administrative law judges shall be members in good standing before the bar of Indiana and shall be appointed by the chairman of the commission. An administrative law judge appointed under this subsection shall have the same powers and duties as a commissioner sitting as an administrative law judge. However, the administrative law judge may not issue subpoenas.

(k) The commission shall state its findings of fact after a hearing and, if the commission finds a person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power:

(A) to restore complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice, **including attorney's fees**; however, this specific provision when applied to orders pertaining to employment shall include only wages, salary, or commissions;

(B) to require the posting of notice setting forth the public policy of Indiana concerning civil rights and respondent's compliance with the policy in places of public accommodations;

(C) to require proof of compliance to be filed by respondent at periodic intervals; and

(D) to require a person who has been found to be in violation of this chapter and who is licensed by a state agency authorized to grant a license to show cause to the licensing agency why his license should not be revoked or suspended.

(l) Judicial review of a cease and desist order or other affirmative



C
o
p
y

1 action as referred to in this chapter may be obtained under IC 22-9-8.
 2 If no proceeding to obtain judicial review is instituted within thirty (30)
 3 days from receipt of notice by a person that an order has been made by
 4 the commission, the commission, if it determines that the person upon
 5 whom the cease and desist order has been served is not complying or
 6 is making no effort to comply, may obtain a decree of a court for the
 7 enforcement of the order in circuit or superior court upon showing that
 8 the person is subject to the commission's jurisdiction and resides or
 9 transacts business within the county in which the petition for
 10 enforcement is brought.

11 (m) If, upon all the evidence, the commission shall find that a
 12 person has not engaged in any unlawful practice or violation of this
 13 chapter, the commission shall state its findings of facts and shall issue
 14 and cause to be served on the complainant an order dismissing the
 15 complaint as to the person.

16 (n) The commission may furnish technical assistance requested by
 17 persons subject to this chapter to further compliance with this chapter
 18 or with an order issued thereunder.

19 (o) The commission shall promote the creation of local civil rights
 20 agencies to cooperate with individuals, neighborhood associations, and
 21 state, local, and other agencies, both public and private, including
 22 agencies of the federal government and of other states.

23 (p) The commission may reduce the terms of conciliation agreed to
 24 by the parties to writing (to be called a consent agreement) that the
 25 parties and a majority of the commissioners shall sign. When signed,
 26 the consent agreement shall have the same effect as a cease and desist
 27 order issued under subsection (k). If the commission determines that a
 28 party to the consent agreement is not complying with it, the
 29 commission may obtain enforcement of the consent agreement in a
 30 circuit or superior court upon showing that the party is not complying
 31 with the consent agreement and the party is subject to the commission's
 32 jurisdiction and resides or transacts business within the county in
 33 which the petition for enforcement is brought.

34 (q) In lieu of investigating a complaint and holding a hearing under
 35 this section, the commission may issue an order based on findings and
 36 determinations by the federal Department of Housing and Urban
 37 Development or the federal Equal Employment Opportunity
 38 Commission concerning a complaint that has been filed with one (1) of
 39 these federal agencies and with the commission. The commission shall
 40 adopt by rule standards under which the commission may issue such an
 41 order.

42 (r) Upon notice that a complaint is the subject of an action in a

C
o
p
y



1 federal court, the commission shall immediately cease investigation of
 2 the complaint and may not conduct hearings or issue findings of fact or
 3 orders concerning that complaint.

4 SECTION 2. IC 22-11-15-5.1 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2002]: **Sec. 5.1. (a) A person injured as a**
 7 **result of an act or practice that violates this chapter may bring a**
 8 **civil action for:**

9 (1) declaratory relief;

10 (2) injunctive relief; and

11 (3) damages;

12 **against the person violating this chapter.**

13 (b) **An action brought under this section must be commenced**
 14 **not later than two (2) years after the date of the alleged violation.**

15 (c) **A court may award costs and reasonable attorney's fees to**
 16 **the prevailing party in an action brought under subsection (a).**

17 SECTION 3. IC 34-51-3-3 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. A jury in a case
 19 subject to this chapter may not be advised of

20 (1) the limitation on the amount of a punitive damage award
 21 under section 4 of this chapter. ~~or~~

22 (2) the requirement under section 6 of this chapter concerning
 23 allocation of money received in payment of a punitive damage
 24 award.

25 SECTION 4. IC 34-51-3-6 IS REPEALED [EFFECTIVE JULY 1,
 26 2002].

C
o
p
y



COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill No. 360, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 12, delete "A person threatened with injury from an act or practice that".

Page 1, delete lines 13 through 16.

Page 1, line 17, delete "(c)".

Page 1, run in lines 12 and 17.

Page 2, line 2, delete "(d)" and insert "(c)".

Page 2, line 2, delete ":".

Page 2, line 3, delete "(1)".

Page 2, run in lines 2 through 3.

Page 2, line 4, delete ";" and insert ".".

Page 2, delete lines 5 through 7.

and when so amended that said bill do pass.

(Reference is to SB 360 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 8, Nays 2.

C
o
p
y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 360, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 5, after "action" insert "**for**".

Page 1, line 6, delete "for".

Page 1, line 7, delete "for".

Page 1, line 7, delete "or" and insert "**and**".

Page 1, line 8, delete "to recover compensatory".

Page 1, line 9, delete "If a person is awarded".

Page 1, delete lines 10 through 11.

Page 1, after line 15, begin a new paragraph and insert:

"SECTION 2. IC 34-51-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. A jury in a case subject to this chapter may not be advised of

(1) the limitation on the amount of a punitive damage award under section 4 of this chapter. ~~or~~

(2) ~~the requirement under section 6 of this chapter concerning allocation of money received in payment of a punitive damage award.~~

SECTION 3. IC 34-51-3-6 IS REPEALED [EFFECTIVE JULY 1, 2002]."

and when so amended that said bill do pass.

(Reference is to SB 360 as printed February 1, 2002.)

STURTZ, Chair

Committee Vote: yeas 8, nays 2.

C
o
p
y



HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 360 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 22-9-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6. (a) The commission shall establish and maintain a permanent office in the city of Indianapolis.

(b) The commission may appoint such attorneys and other employees and agents as it considers necessary, fix their compensation within the limitation provided by law, and prescribe their duties. All these employees, with the exception of the executive director and attorneys, shall be appointed by the commission from eligible lists to be promulgated by the department of personnel as the result of a competitive examination held under IC 4-15-2 and rules of the department and on the basis of training, practical experience, education, and character. However, special consideration and due weight shall be given to the practical experience and training that a person may have for the particular position involved regardless of his academic training. Promotions, suspensions, and removal of persons appointed from such lists shall be in accordance with IC 4-15-2. The reasonable and necessary traveling expenses of each employee of the commission while actually engaged in the performance of duties in behalf of the commission shall be paid in accordance with the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Except as it concerns judicial review, the commission may adopt rules under IC 4-22-2 to implement this chapter.

(d) The commission shall formulate policies to effectuate the purposes of this chapter and make recommendations to agencies and officers of the state or local subdivisions thereof to effectuate such policies. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state or any political subdivision or agency thereof shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any matter before the commission.

(e) The commission shall receive and investigate complaints alleging discriminatory practices. The commission shall not hold hearings in the absence of a complaint. All investigations of complaints shall be conducted by staff members of the civil rights commission or their agents.

ES 360—LS 6924/DI 106+



C
o
p
y

(f) The commission may create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this chapter. The commission may itself, or it may empower these agencies and councils to:

(1) study the problems of discrimination in the areas covered by section 2 of this chapter when based on race, religion, color, sex, handicap, national origin, or ancestry; and

(2) foster through community effort, or otherwise, good will among the groups and elements of the population of the state.

These agencies and councils may make recommendation to the commission for the development of policies and procedures in general. Advisory agencies and conciliation councils created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for reasonable and necessary actual expenses.

(g) The commission may issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, handicap, national origin, or ancestry.

(h) The commission shall prevent any person from discharging, expelling, or otherwise discriminating against any other person because he filed a complaint, testified in any hearing before this commission, or in any way assisted the commission in any matter under its investigation.

(i) The commission may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the production for examination of any books and papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena issued under this section shall constitute a contempt. All hearings shall be held within Indiana at a location determined by the commission. A citation of contempt may be issued upon application by the commission to the circuit or superior court in the county in which the hearing is held or in which the witness resides or transacts business.

(j) The commission may appoint administrative law judges other than commissioners, when an appointment is deemed necessary by a majority of the commission. The administrative law judges shall be members in good standing before the bar of Indiana and shall be appointed by the chairman of the commission. An administrative law judge appointed under this subsection shall have the same powers and duties as a commissioner sitting as an administrative law judge.

C
o
p
y



However, the administrative law judge may not issue subpoenas.

(k) The commission shall state its findings of fact after a hearing and, if the commission finds a person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power:

(A) to restore complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice, **including attorney's fees**; however, this specific provision when applied to orders pertaining to employment shall include only wages, salary, or commissions;

(B) to require the posting of notice setting forth the public policy of Indiana concerning civil rights and respondent's compliance with the policy in places of public accommodations;

(C) to require proof of compliance to be filed by respondent at periodic intervals; and

(D) to require a person who has been found to be in violation of this chapter and who is licensed by a state agency authorized to grant a license to show cause to the licensing agency why his license should not be revoked or suspended.

(l) Judicial review of a cease and desist order or other affirmative action as referred to in this chapter may be obtained under IC 22-9-8. If no proceeding to obtain judicial review is instituted within thirty (30) days from receipt of notice by a person that an order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of the order in circuit or superior court upon showing that the person is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(m) If, upon all the evidence, the commission shall find that a person has not engaged in any unlawful practice or violation of this chapter, the commission shall state its findings of facts and shall issue and cause to be served on the complainant an order dismissing the complaint as to the person.

(n) The commission may furnish technical assistance requested by persons subject to this chapter to further compliance with this chapter or with an order issued thereunder.

(o) The commission shall promote the creation of local civil rights



C
o
p
y

agencies to cooperate with individuals, neighborhood associations, and state, local, and other agencies, both public and private, including agencies of the federal government and of other states.

(p) The commission may reduce the terms of conciliation agreed to by the parties to writing (to be called a consent agreement) that the parties and a majority of the commissioners shall sign. When signed, the consent agreement shall have the same effect as a cease and desist order issued under subsection (k). If the commission determines that a party to the consent agreement is not complying with it, the commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement and the party is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(q) In lieu of investigating a complaint and holding a hearing under this section, the commission may issue an order based on findings and determinations by the federal Department of Housing and Urban Development or the federal Equal Employment Opportunity Commission concerning a complaint that has been filed with one (1) of these federal agencies and with the commission. The commission shall adopt by rule standards under which the commission may issue such an order.

(r) Upon notice that a complaint is the subject of an action in a federal court, the commission shall immediately cease investigation of the complaint and may not conduct hearings or issue findings of fact or orders concerning that complaint."

Renumber all SECTIONS consecutively.

(Reference is to ESB 360 as printed February 22, 2002.)

BROWN C

C
O
P
Y

